Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Nakano   Analyst: LuAnna Hass   Bill Number: AB 845

Related Bills: See Prior Analysis   Telephone: 845-7478   Amended Date: June 25, 2001

Attorney: Patrick Kusiak   Sponsor:

SUBJECT: Alternative Technology Credit

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________________________.
____	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
X	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 16, 2001.
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ________________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 16, 2001, STILL APPLIES.
____	OTHER - See comments below.

SUMMARY

This bill would allow a credit for using alternative dry or wet cleaning technology that is better for air and water quality.

SUMMARY OF AMENDMENTS

The June 25, 2001, amendments would:

- Specify that the credit is operative for taxable years beginning on or after January 1, 2002, and before January 1, 2007.
- Allow the credit for 50% of costs paid or incurred for implementing qualified alternative technology.
- Provide that the credit is not to exceed an unspecified amount.
- Allow any excess credit amount to be carried over for up to five years or until the credit is exhausted.
- Add a repeal date of December 1, 2007.

The June 25, 2001, amendments addressed some, but not all, of the department's prior implementation and policy concerns. As a result of the amendments, the department has identified an additional implementation concern. The department's unresolved implementation and policy concerns are provided below for convenience. The remainder of the department's analysis of the bill as amended April 16, 2001, still applies.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Brian Putler	07/17/01
____ N	____ OUA	X PENDING		

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

Existing Concerns:

The credit would be based on the "cost paid or incurred for implementing qualified alternative technology." However, the language does not define those items that would be included in cost. For example, the bill does not specify whether costs would include the purchase or lease and installation of such technology.

The credit would apply to technology "as determined by the State Air Resources Board (SARB)." However, the bill does not specify whether SARB would establish eligible costs, guidelines, and criteria for the dry cleaning technology. Typically, certain provisions of credits in areas where the department does not possess expertise are certified by another agency or agencies that possesses the relevant expertise. The certification language would specify the responsibilities of both the certifying agencies and the taxpayer. In this instance, the certification process would require multi-media assessments for air, water, ground water, and soil control. An inter-agency task force would need to be created to address the certification issues and could consist of SARB, State Water Resources Control Board (SWRCB), Office of Environmental Health Hazard Assessment, and the United States Environmental Protection Agency's multi-media assessment groups.

The bill would require SARB to designate qualified alternative technologies that are "more protective" of air and water quality. However, the bill does not specify the level of improvement that would be needed to qualify for the credit. Although SARB regulates air quality, it does not regulate water quality standards. Therefore, the bill also would need to identify an agency, possibly SWRCB as part of the inter-agency task force that would be responsible for determining the impact of the qualified alternative technologies on water quality.

SARB would be required to grant a preference to those technologies that provide "energy efficiency." However, the bill does not define energy efficiency for purposes of this credit. This issue could be addressed by the California Energy Commission as part of the inter-agency task force mentioned above.

The bill requires the technology to be "implemented." However, it does not specify that the technology must be actually used after being "implemented" or for how long it must be used for the taxpayer to receive the credit. Further, it is not clear if the credit is allowed in the taxable year in which the cost was paid or the taxable year in which the qualified alternative technology is "implemented."

The bill contains a broad statement that the technology qualifying for the credit may not include any substance known to cause cancer or reproductive toxicity, or any other substance that SARB does not possess adequate or complete health effect or environmental fate studies. However, the bill lacks a specific requirement that the taxpayer must cease use of dry cleaning technologies that use perchloroethylene.

The bill does not specify whether the technology must be purchased "new" or whether existing technology that is updated also would qualify for the credit. Lacking a specific provision on this point, new or used technology would potentially qualify for the credit if it meets SARB requirements.

The credit would be operative for taxable years beginning on or after January 1, 2002. However, the bill does not specify a date by which SARB must have designated the dry or wet cleaning technology that would qualify for this credit. Thus, taxpayers would not be able to determine if the cost of such technology qualifies for the credit until SARB makes its determination.

New Concern:

The bill specifies that the credit is equal to 50 percent of the cost paid or incurred, *not to exceed an unspecified amount.* It is unclear whether this language is intended to limit the amount of costs paid or incurred that are eligible for the credit at the 50 percent rate or whether this language is intended to limit the amount of the credit itself. Amendments 1 and 2 are provided to ensure the credit does not exceed an unspecified amount as opposed to a limit on the amount of costs paid or incurred.

ARGUMENTS/POLICY CONCERNS

By allowing the taxpayer to claim the proposed credit in addition to any deduction allowed for the same expenses, this bill would allow taxpayers to claim multiple tax benefits for the same item of expense. Conflicting tax policies come into play in this situation. This new credit would have the effect of providing a double benefit. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a state and federal difference that is contrary to the state's general conformity policy. In the case of a one-time expense deduction, the reduction of that expense would not create an on-going difference.

The bill does not restrict the credit to those costs associated with dry cleaning businesses located within this state. Thus, a taxpayer with California tax liability could potentially claim this credit for costs related to a dry cleaning business operated outside California.

Taxpayers are generally required to recapture any credit amount by adding it back to their tax liability if the associated item is subsequently sold or put to an unqualified use (including non-use) within a specific amount of time after the purchase date. This bill does not provide a recapture provision.

LEGISLATIVE STAFF CONTACT

LuAnna Hass	Brian Putler
Franchise Tax Board	Franchise Tax Board
845-7478	845-6333

Analyst LuAnna Hass
Telephone # 845-7478
Attorney Patrick Kusiak

FRANCHISE TAX BOARD'S PROPOSED AMENDMENTS TO AB 845
As Amended June 25, 2001

AMENDMENT 1

On page 2, strikeout lines 21, 22 and 23, and insert:

credit against the "net tax," as defined in Section 17039, not to exceed ______ ($______), an amount equal to 50 percent of the cost paid or incurred for implementing qualified alternative

AMENDMENT 2

On page 3, strikeout lines 16, 17 and 18, and insert:

credit against the "tax," as defined in Section 23036, not to exceed ______ ($______), an amount equal to 50 percent of the cost paid or incurred for implementing qualified alternative